

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT JOHNSON,

PETITIONER,

v.

CASE NO. 2:06-CV-13286
HON. GEORGE CARAM STEEH

C. EICHENLAUB,

RESPONDENT.

_____ /

ORDER ACCEPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

This matter is before the court on petitioner Robert Johnson's petition for writ of habeas corpus. Petitioner challenges the Bureau of Prison's regulations governing eligibility for placement in community corrections centers ("CCC"), also known as residential reentry centers ("RRC") or halfway houses. These regulations categorically limit BOP's authority to designate an inmate to a CCC until the last 10% of the inmate's sentence, and limit such placement to no more than six months. *See* 28 C.F.R. §§ 570.20-21. Petitioner claims that these regulations violate the individualized placement consideration mandated by 18 U.S.C. § 3621(b). On March 24, 2008, the Magistrate Judge issued a Report and Recommendation recommending that the petition for writ of habeas corpus be dismissed because he is now housed in a CCC, his habeas application requesting individualized consideration for CCC placement is moot. Objections to that report have not been filed by plaintiff within the established time period. The court has reviewed the file, record, and Magistrate Judge's Report and Recommendation and accepts the Magistrate Judge's Recommendation.

Before Petitioner may appeal the Court's decision, a certificate of appealability must issue.

See 28 U.S.C. § 2253(c)(1)(a); Fed R. App. 22(b). A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When a federal district court rejects a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court’s assessment of the constitutional claim debatable or wrong. *See Slack v MacDaniel*, 529 U.S. 473, 484-85 (2000). “A petitioner satisfies this standard by demonstrating that ... jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v Cockrell*, 537 U.S. 322, 327 (2003). In applying this standard, a district court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of the petitioner’s claims. *Id.* at 336-37.

Having considered this matter, the Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right as to his claims. A certificate of appealability is not warranted. The Court further concludes that Petitioner should not be granted leave to proceed on appeal *in forma pauperis* as any appeal would be frivolous. *See* Fed. R. App. P. 24(a).

Accordingly,

IT IS ORDERED that the Magistrate’s Report and Recommendation is accepted as the findings and conclusions of this court and that petitioner’s petition for writ of habeas corpus is DISMISSED WITH PREJUDICE for the reasons well-developed in the Magistrate Judge’s Report and Recommendation.

IT IS FURTHER ORDERED that a certificate of appealability and leave to proceed on appeal *in forma pauperis* are DENIED.

Dated: July 15, 2008

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
July 15, 2008, by electronic and/or ordinary mail.

S/Marcia Beauchemin
Deputy Clerk